STATE OF MICHIGAN

COURT OF APPEALS

JOHN W. HALE, II, and JULIA H. HALE,

Plaintiffs-Appellants,

v

NEMR E. HANNA,

Defendant-Appellee.

UNPUBLISHED
December 21, 2006

No. 263257
Washtenaw Circuit Court
LC No. 03-000198-CH

Before: Servitto, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court order quieting title to disputed property in defendant. We affirm in part and remand for entry of an order awarding plaintiffs damages in the amount of $3,040.

Plaintiffs first argue that the trial court's factual findings in the bench trial were clearly erroneous. Specifically, plaintiffs argue that by accepting the survey results reported by the engineering firm Ayers, Lewis, Norris and May, which plaintiffs characterize as contrary to the results of two other surveyors, the court's findings were contrary to the great weight of the evidence adduced at trial. We disagree.

We review a claim that a verdict rendered after a bench trial is against the great weight of the evidence under the clearly erroneous standard. *Ambs v Kalamazoo Co Road Comm*, 255 Mich App 637, 651-652; 662 NW2d 424 (2003). A trial court's finding is clearly erroneous when this Court, after reviewing the entire record, is "left with the definite and firm conviction that a mistake has been made." *Id.* at 652. However, we defer to the trial court's determination of witness credibility. *Rellinger v Bremmeyr*, 180 Mich App 661, 665; 448 NW2d 49 (1989).

After reviewing the record, we conclude that the verdict was not against the great weight of the evidence. Here, two experts testified in favor of plaintiffs' claim of ownership of the disputed property and one expert testified in favor of defendant's claim of ownership. The credentials, detailed drawings, and certified survey of Fredd Ziobron, Ayers Lewis's surveyor, were admitted into evidence at trial. Ziobron performed an independent survey and conducted the necessary fieldwork, research, and investigation to assist the trial court in establishing the boundary line between the parties' respective property. The trial court found that

> Mr. Ziobron's testimony was clear, unequivocal, and substantiated. His conclusions were based on well-established scientific principles. He testified that in addition to his field work, review of records at the Register of Deeds, and walking the land and adjoining properties and to reconcile the properties to reconcile the boundary, he could not approve or endorse the proposed boundary established by the LSC/Tietsema survey [plaintiff's expert]. [sic] The Court accepted this testimony as the most credible and authoritative.

After reviewing the evidence, and granting deference to the trial court's determination of the credibility of the witnesses who appeared before it, we are not lead to a definite and firm conviction that the trial court made a mistake in relying on the Ziobron's testimony. The verdict was not against the great weight of the evidence.

Similarly, we are not left with a definite and firm conviction that the trial court made a mistake in quieting title to the disputed property in defendant. Citing *Case v Trapp*, 49 Mich 59, 62; 12 NW 908 (1882), plaintiffs argue that the boundary line has gone unquestioned for a long time and ought not to be disturbed based upon a mere disagreement between surveyors. But plaintiffs have not proved that the boundary line was settled or unquestioned for a long period of time. Indeed, plaintiffs themselves indicate that the monuments had been altered or tampered with, and that they had hired Land Surveying Consultants (LSC) to confirm the original boundaries before building the fence. Moreover, plaintiff John Hale testified that there had been previous disputes over the boundary line with defendant, which "came to a head" shortly before plaintiffs erected the fence dividing the property and leading to this litigation. Therefore, plaintiffs have not demonstrated that there was an unquestioned boundary that had gone unchallenged for a number of years.

Plaintiffs also contend that if a plaintiff in a quiet title action makes out a prima facie case then the defendant has the burden of proving superior right or title in himself, and that defendant in this case has not met his burden of proof. *Boekeloo v Kuschinski*, 117 Mich App 619, 629; 324 NW2d 104 (1982). The trial court, relying on the testimony of defendant's expert, found that defendant had met his burden of proof. We give deference to both the findings of the trial court and the determination of witness credibility, and, as discussed above, plaintiff has not demonstrated that the trial court clearly erred in its reliance on the testimony.

Plaintiffs further argue that public policy favors consistency in ascertaining boundary lines and that "the question is not how an entirely accurate survey would have located the lots, but how the original stakes located them." *Adams v Hoover*, 196 Mich App 646, 651; 493 NW2d 280 (1992). However, *Adams* involved a survey completed by the office of the Mason County Surveyor. As such, the survey was presumptive evidence of the facts contained therein, MCL 54.97. Nothing in the present record indicates any similar significance to the LSC survey. Moreover, plaintiffs have failed to show that in this case, like in *Adams*, a multitude of boundaries had been established in reliance upon the location of the boundary line between plaintiffs and defendant, or that the public's need for finality and uniformity of boundaries and land titles would be harmed if Ayers Lewis's survey were adopted in this case. And, although plaintiffs argue that to give effect to a "technically correct but maverick" survey would have the effect of unsettling boundaries throughout an entire section of land, no evidence was presented to the trial court to show that locating the boundary line where plaintiffs would have it was necessary to avoid disrupting surrounding property lines.

Plaintiffs next argue that the trial court erred as a matter of law in failing to order defendant to compensate plaintiffs for property damage wrongfully caused by defendant to a fence located on their property. We agree.

In their motion for new trial, plaintiffs requested that the trial court rule on the counts of trespass and property damage, and amend its original findings of fact to conform to the undisputed testimony of each of the surveyors that the destroyed fence was on plaintiffs' property. Plaintiffs also requested surveyor's fees. The trial court denied plaintiffs' motion for a new trial and for surveyor's fees, but agreed to consider the issue of property damages concerning the destruction of the fence. The trial court subsequently issued amended findings of fact and conclusions of law that amended its original findings to the extent that it made it clear that the surveyors had found that the destroyed fence was on plaintiffs' property. However, the court again failed to rule on the issues of trespass and property damage. This Court may consider an issue raised before the trial court but not specifically decided by the trial, *Peterman v DNR*, 446 Mich 177, 183; 521 NW2d 499 (1994), particularly where consideration of the issue is necessary to a proper determination of the case.

Here, plaintiff John Hale's testimony that he erected a fence on his property and that defendant took it down was undisputed. Defendant's own expert testified that the remains of the fence (the fence posts) were located on plaintiffs' property. Therefore, the undisputed evidence revealed that defendant entered onto plaintiffs' property and that defendant destroyed their fence. Plaintiffs presented evidence that they suffered damages of $3,040 as a result of the removal of the fence. We therefore remand for entry of an order awarding plaintiffs damages in the amount of $3,040 on their claims for trespass and property damage.

With regard to plaintiff's suggestion that they are entitled to surveyor's fees, plaintiffs' statement of the questions presented does not address the issue. If plaintiffs are attempting to argue this as an issue, they have waived it by failing to properly present it to this Court. *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000). Moreover, plaintiffs raise this argument in one paragraph of their appellate brief, without further discussion or citation of authority. A party may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim. *In re Coe Trusts*, 233 Mich App 525, 536-537; 593 NW2d 190 (1999). Accordingly, we need not address an issue that is given only cursory consideration. *Meagher v Wayne State Univ*, 222 Mich App 700, 716; 565 NW2d 401 (1997). Consequently, the issue of surveyor's fees is waived on appeal, and we decline to address it given the lack of a meaningful argument.

We affirm the order quieting title in favor of defendant and remand for entry of an order awarding plaintiffs damages in the amount of $3,040 for trespass and property destruction. Jurisdiction is not retained.

/s/ Deborah A. Servitto
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot